IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.461 OF 1994

1. Damodar Bulk Carriers Ltd.,
having its registered office at
Salgaocar Chambers,
Margao-Goa;

2. Agencia Commercial Maritima
Parkot House, Swatantra Path
Marg, Vasco-da-Gama,Goa;

3. Shri T. Keshavan,
Businessman, partner of
Petitioner No.2, residing
at Parkot House,
Swatantra Path Marg,
Vasco-da-Gama,Goa;

4. D.B. Swarup,
Director of Petitioner No.1,
residing at Willy Apartments,
Mungul,Margao-Goa ... PETITIONERS

VERSUS

1. The Board of Trustees of the
Mormugao Port Trust, constituted
under the Major Port Trust Act,
1963 and having their office at
Mormugao Harbour-Goa;

2. The Union of India,
through Secretary,
Ministry of Shipping,
New Delhi ... RESPONDENTS.

Mr. A.N.S. Nadkarni, with Mr. S.Sonak and Mr. Neelesh Takkekar, Advocates for the Petitioners.

Mr. V.B. Nadkarni, Sr. Advocate, with Mr. J. Cardoz, Advocate for Respondent No.1.

CORAM : F.I. REBELLO &
P.V. HARDAS,JJ.

DATED : JULY 9, 2003.

ORAL JUDGMENT (PER **F.I. REBELLO,J.)**

A few facts may be set out which are required for the purpose of deciding the issues which arise in this Petition.

Petitioners owned a vessel by name "Damodar Krishna". The vessel was berthed on 4-6-1994 at Berth No.9 at Mormugao Harbour. It is the case of the Petitioners that on 5-6-1994 there was cyclonic storm as a result of which the vessel parted its mooring ropes and drifted. On 6-6-1994 the vessel re-berthed at Berth No.9 at 00.35 hours. The Petitioner No.1 was informed to take immediate steps to engage divers and experts to rectify the situation and the Port Authorities were so informed by the Master of the vessel by letter dated 6-6-1994. Further loading was stopped and charterers were informed of the position. It was found that one of the mooring ropes was fouled with the propeller and the work of clearing that mooring rope was completed on 8-6-1994 at about 16 hours. On 7-6-1994 the Respondent issued a notice to the 2nd Petitioners owners/agents setting out that they were constrained to shift the vessel since it was idle. On 8-6-1994 the Master of the vessel brought to the notice of the Respondents the complications

which had arisen and the efforts that were on to set the complications right. The Respondents by their communication dated 8-6-1994 objected to the carrying of repairs without their prior permission and rejected the request to allow the vessel to remain berthed at Berth No.9. It is the case of the Petitioners that by the said communication the Respondents threatened the Petitioners to impose penal berth hire charges. The charterers agents on 8-6-1994 informed that they desired to cancel the charter and unload the 5000 tonnes which had been loaded in the vessel. The agent requested the Respondents to berth the vessel at Berth No.8 where unloading operations could be carried out.

It is the case of the Petitioners that as per the routine practice each day a meeting takes place at about 4.00 p.m. between the representatives of the Port, shippers and ship owners to draw the programme for berthing/unloading and the shifting movement of the vessel to be carried out within the next 24 hours. Such a meeting took place on 7-6-1994 and at this meeting it was decided that the vessel should unberth from Berth No.9 at 13 hours on 8-6-1994. The Petitioners contend that however as there were complications arising from the entanglement of the

mooring ropes with the propeller it was not expected to complete the process by 13 hours of 8-6-1994 and as such a request was made to allow shifting of the vessel directly from Berth No.9 to Berth No.8 instead of taking out the vessel from the west of breakwater. This request was acceded to and the vessel was allowed to remain at Berth No.9 till Berth No.8 was vacated which was expected to be unberthed from Berth No.8 on the morning of 9-6-1994. The case of the Petitioners is that upon this arrangement being finalised the arrangement/programme issued on 7-4-1994 stood withdrawn/waived or cancelled. In confirmation of the latter arrangement, a meeting was held with the Port authorities on 8-6-1994 to fix the programme for 9-6-1994 to 10-6-1994 in which programme it was mentioned that the two vessels would unberth from Berth No.8 at 7.00 hours and 8.00 hours, respectively, and the vessel would unberth No.9 at 9.00 hours and would berth at Berth No.8 at 10.30 hours. On 8-6-1994 at about 16 hours the propeller was repaired and the vessel was in a position to go out to Berth No.9 at 16 hours ;on 8-6-1994 itself. This was duly communicated by the master of the vessel to the Port authorities. However, in view of the arrangement arrived at on 8-6-1994 and coupled with the fact that no pilot

was made available by the Port authorities for shifting of the vessel, no shifting could take place on 8-6-1994 although the vessel was ready and willing to be shifted. The vessel came to be shifted to Berth No.8 on 9-6-1994 as per the programme. On 1-7-1994 penal berth hire charges at 10 times was imposed from the period 13 hours of 8-6-1994 upto 11.19 hours of 9-6-1994 in the amount of Rs.11,87,752/- which came to be served on the charterer of the vessel. Later on the same was forwarded to the Petitioners. Correspondence ensued and ultimately the Port Authorities granted grace period of 3 hours and reduced the demand by Rs.9,21,545/-. After filing of the petition the demand was reduced to Rs.6,97,165.

2. In the written submissions filed on behalf of the Petitioners the following grounds have been urged:-

(a) Chapter X of the Major Port Trust Act, 1963 (said Act) in general, and Section 115 of the said Act in particular concerns the aspect of imposition of penalty. There is no provision in Chapter X in general, or

Section 115 in particular authorizing levy of Penal Hire charges for delaying movement or shifting a vessel. Regulation 3(b), which is in the nature of a subordinate legislation, can under no circumstances transgress the provisions of parent statute. As such, Regulation 3(b) and the demand for Penal Hire charges made thereunder is clearly ultra vires the said Act.

(b) Assuming that Regulation 3(b) has been framed in exercise of Regulation making power conferred by Section 123 of the said Act, it is submitted that even so the Regulation 3(b) is clearly ultra vires for the following reasons:-

(I) As there are special provisions with regard to Regulations of this type contained in Sections 48 and 115 of the said Act, there arises no question of resorting to the general provisions of Section 123 of the said Act;

(II) Under Section 123 of the said Act, there is no power to frame Regulations imposing penalty.

(c) Section 39 of the said Act deals with power to order vessels not to come along side of or to be removed from the Docks, Wharves, etc. ; This Section empowers the Port Authorities to issue notices and in the event of failure to comply with directions contained in the notices the Board has been empowered to levy penalty on such vessel such sums as it thinks fit not exceeding Rs.10,000/- for each day of 24 hours or portion of such day during which such vessel remains at such dock, berth, wharf, quay, stage, jetty or pier. The Proviso appended to this Section provides that such charge shall not commence to be made till the expiry of 12 hours from service of such notice on the Master, owner or Agent of the vessel.

From the factual scenario narrated hereinabove, it is apparent that at the highest the provisions of Section 39 of the said Act are attracted. Consequently, no penalty in excess of the limits prescribed under this Section could have been imposed. A special statutory provision would obviously override Regulations, particularly where such Regulations or rates are of general nature.

(d) There is arbitrariness involved in the demand which infringes Article 14 of the Constitution of India. In a given case, the Port Authorities may proceed under Section 239 of the said Act, which is a specific statutory provisions fixing maximum rate of penalty. In identical circumstances, the Port Authorities may choose to place reliance on the Regulations and demand a far higher rate of penalty. There are no guidelines by which action to be taken by the Port Authorities in an identical situation of this kind is to be regulated. The

matter is left clearly at the discretion and sweet will of the Port Authorities alone. Such a situation entitling the Respondents to proceed differently in same identical situation would be discriminatory and violative of Article 14 of the Constitution of India.

(e) If the levy is relatable to Sections 42 and 48 of the said Act, even then same is ultra vires, illegal and arbitrary for the following reasons:-

(I) Section 42 of the said Act deals with performance of services by the Board and Section 48 of the said Act deals with Scales of Rates for the services performed by the Board. Berth facility is indeed a service provided by Port and the levy for such service could relate to Section 48(1)(e) of the said Act. Hence, it is apparent that service charges framed as hire charges for

berthing are in the nature of 'fee', and not a 'tax'. The provision for demand of 10 times the normal charges apart from being penal in nature ceases to be a 'fee' and partakes character of a 'tax'. The provisions of Section 48 of the said Act do not authorize imposition of any tax;

(II) As the Berth Hire Charges are in the nature of a 'fee', quid pro quo is an essential element. The services rendered during the normal working period and those rendered after notice to unberth is given are identical in all respects. Therefore, there can be no difference in the rates of fees, levy of 10 times the normal charges renders demand as a tax, which is clearly not authorized under Section 48 of the said Act.

(f) Assuming that the Port Authorities have the power to make the impugned

demand, it is submitted that such power is coupled with a duty to act fairly and objectively having regard to the applicable facts and circumstances. In the present case, the circumstances arose due to cyclone and other factors for which the Petitioners and vessel was clearly not responsible. Again on 8/6/1994 at about 1600 hours the vessel was ready to shift, but for reasons attributable to the Port Authorities the same could not be shifted. The relevant circumstances have therefore been ignored and levy is without application of mind and mechanical. The levy, is therefore, illegal, arbitrary and unconstitutional.

(g) The Impugned Regulation is illegal, in the event the Port Authorities construe same as vesting in them, no discretion whatsoever to impose penalty less than the rates prescribed. No public body can be straightjacketed in its functions, so that it is debarred from considering

objectively the obtaining situation and circumstances while resorting to penal provisions. Consequently, the Impugned Regulation and Impugned Demand based thereon be liable to be struck down.

(h) In the facts and circumstances of the present case, the Respondents were duty bound to exercise powers of remission and/or exemption as contained in Section 53 of the said Act.

(i) The Impugned Demand is vitiated by non-application of mind and unreasonableness in view of the following:-

(I) Notice dated 7/6/1994 was issued to vacate Berth No.9. Thereafter, in the meeting held on 8/6/1994, a fresh programme was prepared for shifting the vessel from Berth No.9 to Berth No.8 on 9/6/1994. Upon such

programme being fixed, earlier notice dated 7/6/1994 to shift the vessel by 1300 hours on 8/6/1994 was waived/revoked/cancelled by implication. Fresh programme as per Agreement arrived at on 8/6/1994, was duly implemented without any delay. As such, the action of Port Authorities in purporting to make demands of payment on basis of earlier notice and programme (i.e. Notice dated 7/6/1994) discloses total non-application of mind and at any rate is unreasonable;

(II) From 1600 hours on 8/6/1994, vessel was fit and ready to shift and this fact was duly intimated to the Port Authorities. The shifting could not take place because no Pilot was available. The responsibility for providing a Pilot is upon the port Authorities. As such, no delay can be attributed to the

Petitioners after 1600 hours on 8/6/1994, consequently demand for penalty is clearly illegal, unreasonable and vitiated by non-application of mind.

3. Respondents have filed an Affidavit of G.S. Borkar at the time of admission of the Petition to oppose the admission and granting of interim reliefs. Thereafter, a further Affidavit has been filed by Shri Uday T. Gaikwad, Sr. Asst. Secretary (Law) to meet the amendments as carried out to the Petition. In the Affidavit it is set out that the Traffic Manager of the Respondents at the meeting held on 7-6-1994 made arrangements for unberthing Damodar Krishna at 13 hours on 8-6-1994 in order to be able to berth another waiting vessel for loading. The Master expressed his inability to vacate for reasons set out earlier. The request was rejected as another vessel was waiting to berth and in these circumstances the request could not be considered particularly as the master had neither informed the Respondents earlier that the vessel could not be moved out nor had it taken permission to engage divers in the port waters. The master was also informed that if he did not vacate the

berth, consequences will follow within 3 hours after the notice was given by the Traffic Manager to vacate the berth. It is stated that the Port Trust had charged additional hire charges from the end of 3 hours i.e. grace period from 16 hours on 8-6-1994 till the pilot boarded the vessel to shift the vessel to berth no.8 i.e. 9.30 hours on 9.6-1994 i.e. only for a total period of 17 hours and 35 minutes which works out to Rs.9,29,545/. It is set out that on 5-6-1994 at about 17 hours there was a sudden unexpected severe gale storm in the port which resulted in the vessel which was secured alongside Berth No.9 to come out of the Berth. The master of the vessel requested for urgent Port assistance. Due to weather conditions the pilot could not bring the vessel to the berth at 00.35 hours on 6-6-1994. It is then admitted that the master did file a note of protest on 6-6-1994 wherein he mentioned about the fouling of the propeller by mooring lines. The master however did not express his inability to use the engines nor did he seek permission to engage the diver to clear the fouled propeller or to ascertain any such damage. Though the Master was aware of the fouling of the propeller in the early hours of 6-6-1994, the diver was engaged to clear on 7-6-1994 and the job was completed at 16-30 hours of 8-6-1994 as per

the diver's report. The Traffic Manager on 7-6-1994 issued a letter to the Petitioners informing that the vessel was berthed for loading 64000 tons of fines. After loading 5000 tonnes of cargo the loading was stopped as per the directions of the master with effect from 16 hours of 4-6-1994. The Traffic Manager informed the master that the if the vessel continued to remain idle, the Traffic Manager should permit another vessel to be berthed and informed the master to take it as a requisite notice for his vessel to vacate the berth under the Mormugao Port Trust Regulations. It is then set out that arrangements for shifting the vessel were taken at Berthing meeting held on 7-6-1994. At that time the Master neither sought permission from the Port for unberthing the vessel at 13 hours on 8-6-1994 and to berth another vessel which was waiting for loading. The Master expressed his inability to move out only on 8-6-1994. As another vessel was already waiting to load the cargo, the Deputy Conservator informed the Master that his request cannot be considered as he had neither informed that the vessel could not move due to the fouled propeller nor had taken permission to engage a diver. The Master was informed that he would have to pay additional hire charges if he did not vacate. By letter dated

9-6-1994 the Master replied to state that he did not take steps to check the propeller because he was waiting the Employees' permission to engage diver. Reliance is placed on the said letter. It is set out therein that it was clear that the Master did not say on 7th June, 1994 that he was not ready to vacate the berth even though he was aware that his propeller had been fouled and therefore it is contended that it is obvious that the fouling of the propeller is only an excuse not to vacate the berth on 8-6-1994. The vessel was to be shifted from Berth No.9 to Berth No.8 for discharging the 5000 tonnes which had already been loaded. Due to monsoonic conditions the vessel could not discharge the 5000 tonnes of cargo at the anchorage east of breakwater or west of breakwater and the vessel was brought to Berth No.8 for that purpose. However, on 8-6-1994 Berth No.8 was already occupied by a tanker and as such Damodar Krishna could not be shifted to Berth No.8.

It is then set out that under the Regulations framed by the Major Port Trust no person can be allowed to dive in the Port or to creep or sweep for anchors, cables, stores or for cargoes lost or suspected to be lost therein or for the purpose of undertaking underwater repairs to

vessels without the prior permission of the Deputy Conservator of Ports or an Officer authorized by him. In the instant case, the master did not take any permission. It is then pointed out that at the berth meeting held on 7-6-1994 the Traffic Manager made a programme for unberthing Damodar Krishna on 8-6-1994 and thereafter to berth the vessel "Paul Keres" at 16.00 hours. It is set out that a programme had already been made to unberth "Shakti Doot" at 10 hours from Berth No.9 and berth "Alma" and "Nand Hari" at 11.00 hours and 12.00 hours, respectively. When Berth No.8 was vacated by tanker, Damodar Krishna was shifted from Berth No.9 to Berth No.8. It is pointed out that at a meeting of the berthing committee held, the inability of the vessel to move out on 8-6-1994 was not expressed by the Petitioner's vessel. It it is then pointed out that the diver's report shows that the repairs to the fouled propeller was completed at 16.30 hours on 8-6-1994. It is pointed out that in the monsoonic season there is no night navigation and hence after the sunset no shipping movement is carried out. If Damodar Krishna has been loaded as per the original programme she could have been unberthed from Berth No.9 at 13 hours and Paul Keres could have been berthed as per the programme.

It is then pointed out that the Petition is not maintainable on the sole ground that the Scale of Rates and Statement of Conditions which the Port Trust is entitled to make under the relevant provisions of the Major Port Trust Act and which have been duly approved by the Central Government and published in the Official Gazette and these constituted the terms and conditions on the basis of which a vessel is permitted to enter the Major Port. Relying on the judgment of the Apex Court, it is pointed out that these are the terms and conditions of the Port Trust and the ship owners under which the Port has to permit a vessel to enter the port. The amount payable is according to the Scale of Rates and the Port Trust is entitled to recover the same. The Respondents denied that the vessel could not be shifted for reasons disclosed by the Petitioners. They have stated that there are disputed questions of fact and as such the Petition ought to be dismissed.

4. In the additional Affidavit filed to meet the challenges brought about by the amendment of the Petition whereby there was a challenge to the Scale of Rates and Statement of Conditions framed by the Board, it is contended that the Board is under the statutory obligation to render

services of various kinds and those services have to be rendered not for personal benefit but in the larger national interest. The Scales of Rates are framed in a manner which act both as incentive and compulsion for expeditious loading/unloading of the ships. Section 48 of the Major Port Trusts Act empowers the Board to frame Scales of Rates and the Statements of Conditions under which any of the services specified thereunder shall be performed by the Board. The impugned Scale of Rates and Statement of Conditions were framed in exercise of the power vested in the Board under Sections 48, 49 and 50 with the sanction of the Central Government as required under Section 52 of the Major Ports Act. It is then pointed out that in the matter where services are offered by a public authority on payment of a price, conditions governing the offer and accepting the services are not in the nature of bye-laws or regulations. They reflect or represent an agreement between the parties under which services are offered at prescribed rates by one party and the other party accepts those service rates. Whatever may the situation, the services have to be paid for at the scales prescribed by the Board. The Port Trusts, it is contended, are Bodies representing public character who are entrusted by the Legislature to frame Scales of

Rates and Statements of Conditions subject to which they shall or may perform certain services. They are not commercial organizations for carrying out business for their own profit. The Board of Trustees, it is pointed out, is a broad based body representing a cross-section of variety of interests including ship owners, the owners of sailing vessels and shippers. It is then set out that additional charges are not in the nature of penalty. It is, therefore, contended that the challenge to the Regulation 3(b) as ultra vires of the Major Ports Act is devoid of any merit. Reliance has been placed on the judgment of the Apex Court in the case of **Port of Madras v. M/s Aminchand Pyarelal and Ors.** (AIR 1975 SC 1935), which dealt with the Scale of Rates framed under Section 42 of the Madras Port Trust Act, 1905. Section 42, it is pointed out, is **pari materia** with Section 48 of the Major Ports Act, 1963.. Reliance is also placed on the judgment in **Board of Trustees of the Port of Bombay v. Indian Goods Supplying Co.** (AIR 1977 SC 1622). Reliance is also placed on the Order of the Apex Court dated 11-9-1996 in Civil Appeal No.1472 of 1986 filed by the Board of Trustees Port of Mormugao against the judgment of this Court dated 23-12-1985 in Writ Petition Nos.187 of 1982 and 209 of 1982. It is pointed out

that the Apex Court took the view that the Order of this Court impinged on the powers of the Board vested under Section 46 as well as the terms of the consent/contract and that it being a matter covered by the statutory provisions as also the contract the High Court ought not to have interfered. It is, therefore, set out that the validity of the impugned Scale of Rates cannot be tested on the basis of element of **quid pro quo** considering that the scales of rates are framed in the manner to act as incentive and compulsion for the expeditious loading/unloading of the ships. It cannot be said that the rates so fixed are exorbitant or unconscionable and/or arbitrary. For all the aforesaid reasons it is contended that the Petition ought to be rejected.

5. From the above, it will have to be considered whether the challenges as now made would be available. It may be pointed out that though we have set down the grounds as filed in the written submissions, it was not seriously disputed that the matter is covered by the two Judgments of the Apex Court and at the highest it is in the Apex Court, if they are advised, that they may raise the points some of which it is contended were not answered in the Judgments of the Apex Court. Apart

from that in our opinion, the matter is no longer res integra considering the Judgments of the Apex Court in the case of **The Trustees of the Port of Madras** v. **M/s. Aminachand Pyarelal and others** (AIR 1975 SC 1935). In that case, there was a challenge to the scale of rates fixed by the Trustees of the Port of Madras under the provisions of the Madras Port Trust Act. The Respondents M/s. Aminchand Pyarelal had succeeded before the Madras High Court. The Apex Court reversed the Judgment while observing that the rates which the Board levies are a consolidated charge for the various services it renders and the liability which it is compelled by statute to undertake. The Apex Court further noted that a Board of Trustees is a broad based body representing a cross-section of a variety of interests. It is the Board thus constituted that frames the Scale of Rates of Conditions under which the services shall or may be performed by it. Every scale and every statement of conditions framed by the Board has to be submitted to the Central Government for sanction under Section 44 and it is only when it is sanctioned that it has a force of law. The requirement of sanction by the Central Government is a restraint on unwise, excessive or arbitrary fixation of rates. Section 44(2) confers on the

Board the power in special cases and for reasons to be recorded in writing to remit the whole or any portion of rates or charges leviable according to any scale in force under Section 44. Thus, the statute provided for the necessary safeguards, checks and counterchecks as an insurance against fixation and levy of harsh or unjust rates. Proceeding further, the Apex Court noted that this fundamental aspect of the fixation of rates had been overlooked by the High Court. The Court posed to itself the question as to what is the object and purpose of the rates which the Board charges to the importer? The Court held that the rates which the Board charges for storage of goods are not levied as means of collecting revenue. The Board is under a statutory obligation to render services of various kinds and those services have to be rendered not for the personal benefit of this or that importer but in the larger national interests. The scale of rates has, therefore, to be framed in the manner which will act both as incentive and as a compulsion for the expeditious removal of the goods from the transit area. Ships like wagons, have to be kept moving and that can happen only if there is pressure on the importer to remove the goods from the Board's premises with the utmost expedition. The Court then observed the Report of

the Committee appointed by the Ministry of Transport and Shipping, Government of India and quoted from the Report as under:-

> "To effect quick clearance of the cargo from the Harbour, the demurrage rates may be so fixed as to make it unprofitable for importers to use the Port premises as a warehouse".

Considering that, the Apex Court held in that case that the scale of rates cannot be characterised as unreasonable.

In **The Board of Trustees of the Port of Bombay** v. **Indian Goods Supplying Co.**(supra) the matter was in respect of claim for demurrage for the period during which the goods were detained with the Port Trust. The High Court had held that the importer of the goods cannot be held responsible for any delay not attributed to his own default and that the importer whose goods are detained by the Customs Department is entitled to claim the clearance of goods without demurrage during the period for which the Customs Department has detained them. Reversing the Judgment of this Court placing reliance again in the case of **The Trustees of the Port of Madras** v. **M/s. Aminchand**

Pyarelal(supra) the Court reiterated that as the scale of rates are framed by virtue of the statutory powers conferred on the Board under Section 43 and as the rates have beeen approved by the Central Government under Section 43B, the rates have the force of law and cannot be questioned. The Court then observed that claim of demurrage cannot be resisted unless where the detention was not due to the shipowner's default. The Court also held that in that case the Port Trust's claim for demurrage could be denied unless it was proved that the delay was due to the Port Trust itself. The Court then went to observe that even though the delay in clearing the goods was not due to the negligence of the importer for which he could be held responsible, yet he cannot avoid the payment of demurrage as the rates imposed are under the authority of law the validity of which cannot be questioned. The claim, therefore, could not be resisted as there was no evidence that the delay was due to any act of the Port Trust or persons for whom the Port Trust is responsible.

Our attention was also invited to the Order passed in Civil Appeal No.1472/1986 between **The Board of Trustees of Port of Mormugao** v. **V. M. Salgaonkar & Brothers Pvt.Ltd.** That matter

pertained to bringing a transhipper in the Port area. The Court held that it could be allowed to be brought in the Port area on such conditions as the Board may specify and it is removed too at the instance of the Board. The Court further noted that the Board's power to permit and impose conditions and the power to cause removal thereof are self-contained in Section 46 of the Act.

6. From the facts on record, in the instant case, it is clear that the charges levied are in terms of the rates fixed. The rates have been duly fixed according to law. The purpose of fixing rates has been noted by the Apex Court in the Judgments adverted to earlier. The Board was entitled to fix the rates. Merely because it fixes the rates and imposes penal charges for delay in moving or shifting of vessel it cannot be said that the demand is illegal. Once they are approved by the Central Government they are enforceable. In **The Trustees of the Port of Madras** v. **M/s. Aminchand Pyarelal and others** it was noted that fixation of demurrage can be recommended so as to make it unprofitable for importers to use the Port premises as a warehouse. Similarly, would be the case in using the berth considering the vessels moving in and out and which are required to

discharge the cargo. Apart from that, from the facts in the instant case, we find that the Respondents have reduced the amount as earlier claimed. There is no material to show that the Respondents had to pay the charges and account for any fault on the part of the Petitioners herein.

We may note here that this Court while passing an Order on 16th December, 1994, had called on Shri Anil Salgaocar to file an Affidavit that the Petitioners shall pay to the Respondents whatever amount is adjudicated by the Court within three weeks from the date of the Order of this Court. An undertaking to that effect has been filed which is noted in the roznama of 22nd December, 1994. Considering that the Judgment was not available for some time. The period of three weeks will commence from 6th August, 2003.

In the light of what is aforestated, there is no merit in this Petition. Rule discharged. There shall be no order as to costs.

P.V.HARDAS, J. F. I. REBELLO,J.

ac/RD.